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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 352 114

GRACE MARSH,

Appellant,

vs.

THE STATE OF ALABAMA

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF ALABAMA

STATEMENT AS TO JURISDICTION

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COURT OF APPEALS OF ALABAMA

GRACE MARSH,

Appellant,

vs.

THE STATE OF ALABAMA,

Appellee

ON APPEAL TO THE SUPREME COURT OF THE UNITED STATES

JURISDICTIONAL STATEMENT

In compliance with Rule 12 (1) of the Supreme Court of the United States, as amended April 6, 1942, appellant files her statement disclosing the basis upon which she contends that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment in question.

Statutory Provisions Sustaining Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code or 28 U. S. C. 344 (a).

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466, an appeal may be taken in any case which under prior statute could be received as a matter of right on writ of error. This case presents a state of facts within the jurisdiction of this court.

Legislation Drawn in Question

The legislation, the constitutionality and validity of which is here drawn in question is the so-called "trespass after warning" statute (Chapter 79, Article 426 of the Alabama Code) which provides:

> "TRESPASS AFTER WARNING. Any person, who, without legal cause or good excuse, enters into the dwelling house or on the premises of another, after having been warned, within six months preceding, not to do so, * * * and fails or refuses, without legal cause or good excuse, to leave immediately on being ordered or requested to do so by the person in possession, his agent or representative, shall upon conviction be fined not more than one hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than three months."

Also drawn in question is a rule promulgated by the Gulf Shipbuilding Corporation for the Town of Chickasaw, Alabama, which it owns, prohibiting peddlers, solicitors and hawkers from plying their trade within the limits of said town without the permission of the housing manager of the town.

How Legislation Construed by Court Below

Chapter 79, Section 426 of the Alabama Code was construed by the Alabama Court of Appeals so as to furnish criminal sanctions for violation of the rule of the Gulf Shipbuilding Corporation prohibiting peddling, soliciting and hawking within the limits of Chickasaw, Alabama, without the prior permission of the housing manager: *The code provision was not restricted so as to give protection to individual property owners troubled by trespassers who, having been previously warned, refused to leave when ordered so to do; but was broadly construed so as to enable*

the manager of the town to absolutely prohibit appellant and others similarly situated from distributing their Bible literature to persons passing along the streets and sidewalks owned by the Gulf Shipbuilding Corporation, without the prior permission of the housing manager. Thus, for all intents and purposes, the Code provision has been construed so as to constitute a peddler's permit law of the type repeatedly struck down by the United States Supreme Court.[1]

The Court of Appeals of Alabama, the highest court of Alabama in which a decision can be obtained in this cause, held that the statute was valid and constitutional and that it did not abridge appellant's rights of free speech, free press and her freedom to worship and serve ALMIGHTY GOD according to His written commands contained in the Bible and according to appellant's conscience. The Court of Appeals also held that said statute was not unconstitutional because unreasonable and in excess of the police powers of the state and hence contrary to the Fourteenth Amendment. The Court of Appeals also refused to hold that the statute conferred authority at once arbitrary and discriminatory, upon the manager of the town, contrary to the Fourteenth Amendment to the Federal Constitution. That court of last resort of the State of Alabama sustained the application of the statute to appellant and decided in favor of the validity of same under the Federal Constitution and held that it was constitutional on its face and as construed and applied.

Alabama Court of Appeals Is Court of Last Resort

Under the Alabama law, the Court of Appeals is the tribunal of last resort in criminal cases of the kind here involved. The Supreme Court of Alabama maintains re-

[1] *Largent* v. *Texas*, 318 U. S. 418 (1943); *Schneider* v. *New Jersey*, 308 U. S. 147 (1939); *Lovell* v. *Griffin*, 303 U. S. 444 (1938).

visory powers by means of the writ of certiorari, however. Therefore, within 15 days from the date of the judgment of the Court of Appeals overruling appellant's motion for rehearing (February 13, 1945) [107] [2] appellant filed a petition for writ of certiorari in the Supreme Court of Alabama, praying that the writ be issued to the Court of Appeals for review of its judgment [108-113]. In such petition, appellant complained of the judgment of the Circuit Court of Mobile County on the grounds that the statute had been construed and applied to deprive appellant of her right of freedom of speech, press, assembly and worship, and because such statute vested an arbitrary and discriminatory power in the police authority and left the question of violation of such statute entirely to the whim and caprice of the housing managers and was thus vague and indefinite and void on its face and as construed and applied [108-113]. After duly considering this petition, the Supreme Court of Alabama, on March 29, 1945, denied same [113], and thereupon the judgment of the Alabama Court of Appeals became final.

The Alabama Court of Appeals was the highest court in the state in which a decision could be had in this cause, although such court is not the highest court in the state. The judgment and order of affirmance entered by the Court of Appeals was not susceptible of further review by appeal in the state courts. All proper steps were taken to secure further review by presenting the petition for writ of certiorari to the Supreme Court of Alabama. Exercising its discretion in such case, the Supreme Court on March 29, 1945, refused to issue the writ and review the judgment of the Court of Appeals [113].

The judgment of the Supreme Court merely states that the petition for the writ is denied, but it does not *affirm* the judgment of the Court of Appeals. In denying the

[2] Bracketed figures refer to page numbers of typewritten transcript.

petition for writ of certiorari in *Jones* v. *Opelika*, 242 Ala. 549, 7 S. 2d 503 (1942) (reversed by the United States Supreme Court at 319 U. S. 103), the Alabama Supreme Court specifically adjudged that the writ was "denied and the judgment affirmed." Hence, in that case petitioner applied to the United States Supreme Court for a writ of certiorari directed to the Supreme Court of Alabama praying for review of the judgment of said court. But here the situation is different in that the judgment of the Supreme Court of Alabama denied certiorari, but did not affirm the judgment of the Court of Appeals. Therefore, the judgment here appealed from is that of the Court of Appeals, which became final upon denial of the petition for writ of certiorari by the Supreme Court of Alabama. See *Bacon* v. *Texas*, 163 U. S. 207, 215; *Sullivan* v. *Texas*, 207 U. S. 416, 422; *San Antonio & A. P. R. R.* v. *Wagner*, 241 U. S. 476, 477; *Randall* v. *Board of Comm'rs of Tippecanoe County, Ind.*, 261 U. S. 252; *Western Union Tel. Co.* v. *Crovo*, 220 U. S. 364, 366; *Stanley* v. *Schwalby*, 162 U. S. 255, 269; *Norfolk & S. Turnpike Co.* v. *Virginia*, 225 U. S. 264, 269; *Cuyahoga Power Co.* v. *Northern Realty Co.*, 244 U. S. 300, 302, 303; *Western Union Tel. Co.* v. *Priester*, 276 U. S. 252, 258; *Pennsylvania R. R.* v. *Illinois Brick Co.*, 297 U. S. 447, 453; *Mellon* v. *O'Neill*, 275 U. S. 212, 213; *Second Nat'l Bank of Cincinnati* v. *First Nat'l Bank of Oceana*, 242 U. S. 600; *Chesapeake & Ohio R. R.* v. *Kuhn*, 284 U. S. 44, 45, 46.

Timeliness

The judgment of the Alabama Court of Appeals, affirming the judgment of the Circuit Court of Mobile County assessing a fine of Fifty ($50) Dollars and costs, was rendered and entered on the 9th day of January, 1945 [96]. Thereafter, within the time allowed by law, an application for rehearing was filed by appellant [105]. Said application for rehearing was overruled on the 13th day of Feb-

ruary, 1945 [107]. On February 24, 1945, a petition for writ of certiorari was filed in the Supreme Court of Alabama, raising the identical questions as urged in the Alabama Court of Appeals [108-113]. The Supreme Court of Alabama on March 29, 1945 denied that petition without opinion [113], whereupon the judgment of the Court of Appeals became final. This appeal is duly presented and filed within three months from the date such judgment of the Court of Appeals became final and is therefore timely.

Opinion

The opinion of the Alabama Court of Appeals is not yet reported. It is set out in the record [96-105] and is printed as an appendix to this jurisdictional statement.

No opinion was filed by the Supreme Court of Alabama in this cause.

Statement of the Case

Facts

Appellant Grace Marsh is an ordained minister of Almighty God, and as such is one of Jehovah's witnesses preaching the gospel of the Kingdom of God [44, 47]. The Watchtower Bible and Tract Society, under direction of which she carried forward her ministerial activities, issued to her a certificate of ordination and identification, which was introduced in evidence as Defendant's Exhibit 3 [51-55]. Appellant explained that Jehovah's witnesses are true followers of Christ Jesus and are dedicated to the promulgation of His teachings among the people of good-will toward Almighty God. This is done in the apostolic manner as shown in the following scriptures cited from the Bible:

"And how I * * * have taught you publickly, and from house to house."—Acts 20:20.

"Go ye into all the world, and preach the gospel to every creature."—Mark 16:15.

"And he [Jesus] went round about the villages, teaching."—Mark 6:6.

"And it came to pass afterward, that he went throughout every city and village, preaching and showing the glad tidings of the Kingdom of God; and the twelve were with him."—Luke 8:1.

Appellant said that she devoted her entire life to this work [44]. In addition to orally teaching the people concerning the kingdom of God, she used various printed publications, such as books, booklets [52-53] and magazines [45]. Such she distributed to "any person of good-will who desires to read them" [45]. To the end that this may be accomplished in an orderly manner, the city of Mobile and surrounding communities had been divided up by Jehovah's witnesses into territory sections, and each minister given a section to serve.

Chickasaw, Alabama, a suburb of Mobile, lies in the territory section assigned to appellant [48]. According to the latest United States Census (1940), this community had a population of 1530. Since the industrial expansion occasioned by the influx of war workers, this population has increased considerably within recent months [13]. By the record it appears that this community sprang up during World War I as a "boom-center". The place was owned and developed by the Tennessee Land Company. That concern's local manager, William C. Myles, testified that his company erected a group of stores in the year 1921, including a drug store, hardware store, grocery, bakery, and a restaurant. Those stores constituted a so-called "business block" for the community. All the stores were located in one building, approximately 150 feet long [64]. A separate frame building, situated nearby, provided quarters for a post office. All of those buildings fronted on a street, 250

feet in length, which ran parallel with a main highway [64]. Both ends of that street were connected with the highway, so that the street formed a sort of short circular detour from the main road for the convenience of shoppers in the business center [30, 31, 36, 64]. All those buildings were only 30 or 40 feet off the highway, and the street was separated from the pavement of the highway only by a narrow strip of dirt [31]. A concrete sidewalk lay in front of the stores, the entire length of the building [30]. The stores were leased out to tenants who conducted their respective businesses in the customary and usual manner for general public patronage [56, 65, 67]. The post office served not only the people living on the company-owned land, but also all the surrounding area [61, 62]. There was no visible mark of any kind that would indicate the boundary of the company-owned property and adjoining property otherwise owned [14].

In 1941 the Tennessee Land Company sold its property, including the business block in question, to the Chickasaw Development Company, which in turn was shortly absorbed into the Gulf Shipbuilding Corporation, the present owner [20, 63]. Both street and highway were widened, the stores were remodeled and other additions were made; but in all other respects the change in ownership did not change the character of the business center [34, 40, 56]. In December, 1943, a barber shop, drug store, beauty parlor, laundry, post office, grocery store, doctor's office and a commercial office were operating in the business block under leases from the Gulf Shipbuilding Corporation, and doing business with the general public [30, 37].

Representatives of both the present and former owners of the business block declared that there had never been an express dedication of the streets and sidewalks to the public use and that the owners had always paid taxes on the

property thus being used [31, 67]. However, the deed (State's Exhibit 1) conveying the property in question to its present owner, the Gulf Shipbuilding Corporation, clearly shows that there was a recognized dedication of the "streets, alleys or public roads". In the warranty section of the deed, the Grantor (Chickasaw Development Co., Inc.) put the following limitation [27]:

> "* * * provided however that the warranties herein contained do not apply to areas or property located in any of the streets, alleys or public roads nor to the sewer line extending between the Main Village and the East Village of Chickasaw, not to the right of way therefore, nor to shrubbery, and as to said streets, alleys, public roads, property therein and the sewer line between said villages with the right of way therefor and shrubbery this instrument shall constitute a quit-claim deed only."

Furthermore, the evidence is undisputed that the sidewalks have never been restricted for the general, orderly use of the public, peddling excepted [36, 39, 40, 48, 69]. The testimony of A. I. Chatham, Deputy Sheriff for the development for the past 12 years, emphasizes the continuous, unrestricted use of this sidewalk by the public [12-13]:

> "Q. Has that sidewalk been continuously used by the general public during all of those twelve years you have lived there? A. Yes sir.
>
> "Q. Are these the first people that have been arrested there offering a magazine or paper on the sidewalk? A. The first ones that I have arrested, yes sir.
>
> "Q. Have you known of any others to be arrested there for that? A. No sir.
>
> * * * * * * *
>
> "Q. This sidewalk is used you say by the general public, that is similar to the use that is put to in any small town of that size, is it not? A. Yes sir, the general public use it."

This was confirmed by the Tennessee Land Company's manager, William C. Myles, who went even further and agreed that while he had title to the property, he "never stopped anybody from using it so long as they used it in an orderly and proper manner and were not there for any gainful purpose" [69].

The manager of the Tennessee Land Company, former owner of the property, said that it had always been the rule to require peddlers and hawkers to obtain prior permission from him before they could sell their wares on the streets of the business center [67]. E. B. Peebles, Vice President of the Gulf Shipbuilding Corporation, testified that he had continued that practice [32]. Around the first of December 1943, Mr. Peebles, acting for the Gulf Shipbuilding Corporation, caused the following notice (State's Exhibit 2) to be posted in the windows of the stores along the business block [34, 37]:

"NOTICE

"This is private property, and without written permission, no street, or house vendor, agent or solitation of any kind will be permitted.

Gulf Shipbuilding Corporation, Housing Division."

For approximately six months prior to December 24, 1943, Grace Marsh and others of Jehovah's witnesses had been engaging in the distribution of printed Bible literature to the people living in the Chickasaw development [48]. It was her custom particularly to engage in the distribution of the *Watchtower* and *Consolation* magazines each Saturday afternoon on the sidewalk in front of the business-block. This she would do by standing on the outer edge of the sidewalk near the curb displaying the magazines to the people passing up and down, at the same time calling out in moderate tones, "Watchtower, announcing Jehovah's Kingdom" [44, 45, 49]. She insisted that the magazines

were not for sale and that she was not selling them, but she explained that she offered this literature freely to all persons with whom she came in contact, giving such publications to those who desired to read and study same. The persons receiving this literature were given opportunity to contribute a small sum to assist in printing like literature and to further the charitable work in which she was engaged. But if the person was too poor or otherwise unable to contribute anything, and desired to have literature, she said she let such have the magazines without receiving any contribution [45, 49].

Both of the magazines being distributed, (*The Watchtower*, issue of December 15, 1943, and *Consolation*, issue of December 22, 1943), were introduced in evidence as Defendant's Exhibits 1 and 2, respectively, and have been handed up to the United States Supreme Court in original form [19]. Examination of these magazines discloses that both are devoted to Christianity and Christian teachings and contain no commercial advertising. *The Watchtower*, issued semimonthly, deals entirely with Scriptural discussions of great concern to the people seeking knowledge of God's purposes toward mankind. *Consolation*, a journal of fact, hope and courage, issued biweekly, publishes news uncensored by any political, religious or commercial body and contains Bible treatises as well. [Cf. testimony of Deputy Sheriff Chatham, in this connection [14, 15, 18].]

As had been their weekly custom, appellant and a companion appeared on the sidewalk in front of the business section on Saturday afternoon, December 11, 1943, and began to offer the magazines as just described [7-8, 45]. It was while they were thus engaged that Deputy Sheriff Chatham, who is employed by the Gulf Shipbuilding Corporation to police the development, placed appellant and her companion under arrest, and held them in the com-

pany office there for one or two hours [8, 45]. The officer said that he made this arrest on the order of Mr. Peebles, the manager of the housing development, who had instructed him to forcibly remove Jehovah's witnesses from the business-block at any time they appeared [8, 38]. Appellant was warned not to again distribute magazines in that area and was released [45, 50].

The following Saturday afternoon appellant, together with others of Jehovah's witnesses, again appeared on the business block. They were immediately arrested by the local Deputy Sheriff and taken to the Mobile County Jail, where, after some discussion, and further warning, they were released without charges being placed against them [9, 46].

A few days later, appellant called at the office of Mr. Peebles, the manager of the development, to straighten out, if possible, their differences. [41] At that time appellant advised him that they were engaged in a charitable Christian work as ordained ministers, and fully explained same to him. She offered him sample copies of both the magazines that Jehovah's witnesses desired to distribute and advised him that since their continuance in this God-given activity to them meant everlasting 'life or death' at the hand of Almighty God, they would have to insist on their constitutional right to distribute this printed message of God's kingdom to the people in the manner aforesaid. [46, 42] Mr. Peebles told them that regardless of their understanding, they would first have to obtain a permit to carry on their work and that he was not willing to issue such a permit. [33] Further, he specifically warned them not to come on the streets again [33].

On Saturday, December 24, 1943, appellant and two companions appeared with their magazines on the sidewalk in front of the business center, one standing in the center of

the block and the other two at opposite ends [4]. They were immediately accosted by Mr. Chatham, the company police officer, who again informed them that they could not carry on their activity without a permit and called their attention to the notice (State's Exhibit 2) posted in the shop windows. [4, 48] Appellant testified that she then "reminded him we were *ordained ministers* and that was the right granted to us by the Constitution; we were commanded by Almighty God to do this and we couldn't ask man for permits to do this work; we were not peddlers and we were not soliciting for anything, we were simply there carrying on our Christian educational work in an orderly manner" [47]. This was confirmed by the officer [4, 18].

The officer then placed them under arrest, put them in his car and started toward the police station. However, he circled the block before going to the station, and as he came back around he found that three others had taken the place on the street of those he had just arrested, so he stopped and took them into custody also [5]. The group was then taken to the Sheriff's office in Mobile where charges of "trespass after warning" were placed against them.

Grounds and Decisions Sustaining Appellate Jurisdiction of the Supreme Court of the United States and Showing Federal Questions Involved on Appeal.

ONE

The statute and regulation insofar as they have been construed and applied by the court below to allow the owner of the sidewalks and street arbitrarily to prohibit appellant from distributing thereon in an orderly manner Bible literature explaining God's Kingdom, constitute an unreasonable abridgment of appellant's rights of freedom of speech, press, assembly and worship, contrary to the First

and Fourteenth Amendments to the United States Constitution.

A

The use to which the property in question has been dedicated by the Gulf Shipbuilding Corporation and to which it has been put by the people creates a relationship between the owner and the public similar to that existing between a municipal corporation and its constituents, and thus the constitutional limitations applicable to ordinances of municipal corporations likewise apply to the Gulf Shipbuilding Corporation acting as a *de facto* municipal corporation.

Hague v. *C. I. O.*, 307 U. S. 496 (1938);
Jamison v. *Texas*, 318 U. S. 413 (1943);
Thornhill v. *Alabama*, 310 U. S. 88 (1940);
Republic Aviation Corporation v. *N. L. R. B.*, No. 226, Oct. Term 1944, — U. S. —, decided April 23, 1945.

B

The statute and regulation are unconstitutional insofar as they have been construed and applied by the court below to be a means of enforcing with criminal sanctions the regulation of the Gulf Shipbuilding Corporation that Jehovah's witnesses obtain a permit from the housing manager of the town before preaching the gospel by means of distributing printed Bible sermons to people passing along the street and sidewalk in question.

Blue Island v. *Kozul*, 379 Ill. 511, 41 N. E. 2d 868 (1942);
Borchert v. *Ranger*, 42 F. Supp. 577 (1941);
Cantwell v. *Connecticut*, 310 U. S. 296 (1940);
Emch v. *Guymon*, 75 Okla. Cr. 1, 127 P. 2d 855 (1942);
Florida ex rel. Hough v. *Woodruff* 147 Fla. 299, 2 S. 2d 577 (1941);

Florida ex rel. Wilson v. *Russell* 146 Fla. 539, 1 S. 2d 569 (1941);
Largent v. *Texas*, 318 U. S. 418 (1943);
Lovell v. *Griffin*, 303 U. S. 444 (1938);
Tucker v. *Randall*, 18 N. J. Misc. 675, 15 A. 2d 324 (1940).

C

The statute and regulation are unconstitutional insofar as they have been construed and applied by the court below to be a means of enforcing with criminal sanctions the absolute prohibition imposed by the Gulf Shipbuilding Corporation on the activity of Jehovah's witnesses in preaching the gospel by means of distributing printed Bible sermons to persons passing along the street and sidewalk in question.

Carlson v. *California*, 310 U. S. 106 (1940);
Jamison v. *Texas* 318 U. S. 413 (1943);
Jones v. *Opelika*, 316 U. S. 584 (1942), reversed at 319 U. S. 103 (1943);
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Walrod, Ex parte, 73 Okla. Cr. 299, 120 P. 2d 783 (1941);
Winnett, Ex parte, 73 Okla. Cr. 332, 121 P. 2d 312 (1942);
Zimmermann v. *London*, 38 F. Supp. 582 (1941).

Two

As they have been construed and applied by the court below to abridge and deny appellant's constitutionally guaranteed rights of freedom of speech, press, assembly and worship, the statute, as well as the regulation, is presumptively unconstitutional, and which presumption the

State has failed to overcome by a showing that both of these enactments are reasonable and necessary means to prevent a clear, present and substantial danger to the public peace and order, or right of private property.

Bridges v. *California*, 314 U. S. 252, 262, 273 (1941);
Busey v. *Dist. of Columbia*, 138 F. 2d 592, 78 App. D. C. 189 (1943);
De Jonge v. *Oregon*, 299 U. S. 353 (1937);
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Thomas v. *Collins*, —— U. S. ——, 65 S. Ct. 315, 322 (1945);
Thornhill v. *Alabama*, 310 U. S. 88 (1940);
West Virginia State B'd of Educ'n v. *Barnette*, 319 U. S. 624, 638 (1943);
United States v. *Carolene Prod. Co.*, 304 U. S. 144, 152 (1938);
Jackson, Robert H., The Struggle for Judicial Supremacy (New York, Knopf, 1941), p. 285.

THREE

The statute and the regulation are unconstitutional on their face and as construed and applied by the courts below in that they are not narrowly drawn laws in either case defining and punishing specific conduct, but both are vague, indefinite, uncertain, too general, and both fail to furnish a sufficiently ascertainable standard of guilt, permit speculation and amount to a dragnet, contrary to the due process and equal protection clauses of the Fourteenth Amendment to the Federal Constitution.

Connally v. *General Constr. Co.*, 269 U. S. 385, 391, 392 (1925);
De Jonge v. *Oregon*, 299 U. S. 353 (1937);
Herndon v. Lowry, 301 U. S. 242 (1936);
Lanzetta v. New Jersey, 306 U. S. 451 (1939);

New Jersey v. *Klapprott*, 127 N. J. L. 359, 22 A. 2d 877 (1941);
Small Co. v. *American Sugar Ref'g. Co.*, 267 U. S. 233 (1925);
Smith v. *Cahoon*, 283 U. S. 553, 564 (1930);
Stromberg v. *California*, 283 U. S. 359 (1931);
Thornhill v. *Alabama*, 310 U. S. 88, 100 (1938);
Tozer v. *United States*, 52 F. 917, 919 (1892);
United States v. *Capital Traction Co.*, 34 App. D. C. 592 (1910);
United States v. *Cohen Grocery Co.*, 255 U. S. 81 (1920);
Weeds, Inc. v. *United States*, 255 U. S. 109 (1920).

DISCUSSION

One

The statute and regulation insofar as they have been construed and applied by the court below to allow the owner of the sidewalks and street arbitrarily to prohibit appellant from distributing thereon in an orderly manner Bible literature explaining God's kingdom, constitute an unreasonable abridgment of appellant's rights of freedom of speech, press, assembly and worship, contrary to the First and Fourteenth Amendments to the United States Constitution.

A

The use to which the property in question has been dedicated by the Gulf Shipbuilding Corporation and to which it has been put by the people creates a relationship between the owner and the public similar to that existing between a municipal corporation and its constituents, and thus the constitutional limitations applicable to ordinances of municipal corporations likewise apply to the Gulf Shipbuilding Corporation acting as a de facto *municipal corporation.*

Public streets, highways, sidewalks, parks and similar places, have from the very earliest times been devoted to the convenience of inhabitants of communities which they serve. Not only have they been used for the purposes of travel, but it is a fact of which this court can take judicial notice that those public places are commonly used for other purposes. Without exhaustively reviewing all the usual purposes to which public streets in particular are devoted, it will suffice for needs of this case to state that they have, from time immemorial, been recognized as a place for men to communicate ideas and discuss problems of general interest. This principle is cogently stated in the recently decided case of *Hague* v. *C. I. O.*, 307 U. S. 496 (1938), in which Mr. Justice Roberts, speaking for the Supreme Court of the United States, declared:

> "Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights and liberties of citizens."

Thus it was that, in 1943, the city of Dallas, Texas, sought before the United States Supreme Court, in the case of *Jamison* v. *Texas*, 318 U. S. 413 (1943), to justify the operation of an ordinance which absolutely forbade the distribution of handbills on its streets. Dallas had established that under Texas statutes it had complete ownership and absolute control of the streets and therefore it relied on the precedent of *Davis* v. *Massachusetts*, 167 U. S. 43 (1897), as its authority. This gave the Supreme Court opportunity to state specifically that the rule in the *Davis* case was no longer the law, and that such an ordinance was unconstitu-

tional and void when construed and applied to the activity of Jehovah's witnesses, the very activity involved in the instant controversy.

In *Thornhill* v. *Alabama*, 310 U. S. 88 (1940), a case involving an anti-picketing statute of this State, the United States Supreme Court recognized the fact that the picketing was being done on privately owned company property and not on municipally owned sidewalks. The court's description of the property bears a striking and significant resemblance to the facts in this case:

> "The picket posts appear to have been on 'Company property, 'on a private entrance for employees, and not on any public road.' One witness explained that practically all of the employees live on Company property and get their mail from a post office on Company property."

Despite the fact that in that case the State made much of its contention that since the picketing was done on private property as distinguished from public property, the pickets could not claim infringement of the rights of freedom of speech and press, the court observed in a footnote on the last page of the opinion that this contention was "without significance." Under the doctrine in the *Thornhill* case it cannot be now doubted that workers have a right peaceably to express their views concerning their employment relations (i. e., to "picket") even though such be done on privately owned streets of the company being thus picketed. If pickets have the right to express their views on such company owned streets, certainly Jehovah's witnesses have a right to impart their views to the public on company owned streets. Had appellant here and her companions been pickets involved in a labor dispute with the Gulf Shipbuilding Corporation, it could scarcely be doubted that the *Thornhill* case would be controlling. The circumstances are

so analogous that it is a very persuasive authority in this controversy.

In the two cases of *Republic Aviation Corporation* v. *N. L. R. B.* (No. 226) and *N. L. R. B.* v. *Le Tourneau Company of Georgia* (No. 452), 13 LW 4367, decided April 23, 1945, situations analogous to the instant case were presented. In the *Le Tourneau* case a corporation owning a large tract of land upon which its factory buildings were located, adopted the following rule:

> "In the future no Merchants, Concern, Company or Individual or Individuals will be permitted to distribute, post or otherwise circulate handbills or posters, or any literature of any description on Company property without first securing permission from the Personnel Department."

That rule the Company enforced against certain of its employees who were distributing union leaflets on company owned property. The controversy was taken before the National Labor Relations Board where it was held that the enforcement of such rule violated the right of the employees to organize into unions, free from interference of the employer, as guaranteed by the National Labor Relations Act. This holding of the Board was sustained by the United States Supreme Court, *in spite of the fact that the activity involved took place entirely on company owned property.*

The same result was reached in the *Republic Aviation Corporation* case.

Now, if the right of private property held by the companies in those cases did not justify the rule when applied contrary to the National Labor Relations Act, neither will it, in the instant case, justify application of a rule contrary to the Constitution of the United States. Certainly the specific guarantees of freedom of speech, press, and worship, as set out in the First Amendment, are more com-

pelling in their operation than rights created under the National Labor Relations Act. Therefore, it is submitted that the company cannot in this case take refuge behind its right of property and ignore the constitutional rights of the people residing on said property to receive the message of Jehovah's witnesses, any more than it could deny their rights under the National Labor Relations Act.

From these cases, then, this important and controlling principle may be formulated, to wit: Under the protection afforded by the Constitution to the rights of freedom of speech, press, assembly and worship, the people have the inherent, "imprescriptible" right to use the public ways and streets in the orderly exercise of such freedoms, regardless of the fact that the municipality may own the fee of the property and have absolute control thereof. Therefore, as will be seen, the problem is unaffected by reason of the fact that a private, as distinguished from a municipal, corporation owns the fee of the street and sidewalk.

In all these cases decided by the Supreme Court of the United States, the state or municipal corporations (as the case has been) have argued in one way or another that by virtue of their title to the streets and sidewalks, they could regulate, prohibit and censor all activity carried out upon the street even though such activity involved freedom of speech, press, assembly and worship. But this contention has been specifically rejected by the United States Supreme Court, and it is held that the right of the public to use the streets for the purpose of dissemination of information and opinion transcends rights flowing from state or municipal ownership of the streets to control use of the streets.

A private corporation owning a town and its streets has no higher right than does a municipal corporation. The Gulf Shipbuilding Corporation has no right to regulate, censor or prohibit press and related activities upon the

streets any more than a municipal corporation of a state possesses such right. In this case the record shows, and all the witnesses freely admitted, that the streets of Chickasaw are used in the same way and for the same purpose as are the streets of any other city, town or village. The private corporation enjoys a relation toward the public using the streets in this case similar to that of a municipal corporation. It is a *de facto* municipal corporation. Apparently it employs its own firemen and policemen [8] and maintains its system of streets and sidewalks. It does everything for the people residing therein that a regular municipality does for its constituents.

That being true, it is plain that since a municipal corporation cannot prohibit, censor or unreasonably restrict the activity of Jehovah's witnesses upon its public streets, then, by force of the same reasoning, this private corporation, claiming the same title to the streets of Chickasaw, cannot prohibit, censor or control the activity of Jehovah's witnesses in this case. *A fortiori*, they cannot be convicted under the statute in this case without bringing the statute into collision with the Constitution of the United States and this state, resulting in a violation of appellant's rights of freedom of press, speech, assembly and worship of Almighty God.

The courts cannot sanction a town or village virtually seceding from the Constitutional Union merely because it is privately owned. In approaching the constitutional aspects of this case, it must be recognized, therefore, that the problem presented is not unusually complicated because the street and sidewalk concerned are located on property owned and maintained by a *de facto* municipal corporation rather than by a regular municipal corporation.

"In what respect could it be said that the nature of the ownership of the street and sidewalk in question was more

complete than that of the State over its highways acquired by right of eminent domain? There is absolutely no difference in the extent of the ownership. The controlling consideration is that the incidents took place on a street open to the general public, and used by the general public in the same manner as other streets in and around Mobile are used. As said in *Hague* v. *C. I. O.*, 307 U. S. 496, 'Wherever the title of streets may rest, they have immemorially been held in trust for the use of the public for purposes of discussing public questions.' Thus it is the *use* to which the property has been dedicated that determines the constitutional rights of the people thereon, and not the technical question of ownership. Here the Gulf Shipbuilding Corporation has seen fit to lay out a small community or village on its property. It connected the shopping district with a public highway, thereby extending to the general public an easement to enter at will for all public purposes.

Having established, therefore, that the owner of the street and sidewalk in question was in truth a *de facto* municipal corporation bearing the same duties and responsibilities to the people as any regular municipal corporation might, the unconstitutionality of the statute, as it has been construed and applied to enforce the demands of the Gulf Shipbuilding Corporation, may be considered in the searching light of the "Bill of Rights."

B

The statute and regulation are unconstitutional insofar as they have been construed and applied by the court below to be a means of enforcing with criminal sanctions the regulation of the Gulf Shipbuilding Corporation that Jehovah's witnesses obtain a permit from the housing manager of the town before preaching the gospel by means of distributing

printed Bible sermons to people passing along the street and sidewalk in question.

The Gulf Shipbuilding Corporation through its duly constituted agents demanded that appellant go to the office of the manager of its housing division and obtain a permit before the appellant proceeded to carry on her work. Had she applied for and secured such a permit, she could have gone on undisturbed in her activity. But she admittedly did not apply for a permit and the manager testified that even though she had so applied he would not have granted the permit [33]. The granting of the permit was a matter strictly within the discretion of the manager. He could arbitrarily grant or refuse to grant the permit without assigning any reason. Because appellant refused to submit to this rule, the manager caused her arrest under the trespass statute of the state, thereby enforcing his rule with criminal sanctions.

Within recent years the Supreme Court of the United States has had frequent opportunity to consider the constitutionality of such censorship laws as they have been construed and applied to the activity of Jehovah's witnesses identical with that involved here. Most recent of these cases is *Largent v. Texas*, 318 U. S. 418 (1943). There Mr. Justice Reed says:

> "Upon the merits, this appeal is governed by recent decisions of this Court involving ordinances which leave the granting or withholding of permits for the distribution of religious publications in the discretion of municipal officers.* [* Lovell v. Griffin, 303 U. S. 444, 447, 451; Schneider v. State, 308 U. S. 147, 157, 163; Cantwell v. Connecticut, 310 U. S. 296, 302.] It is unnecessary to determine whether the distributions of the publications in question are sales or contributions. The mayor issues a permit only if after thorough investigation he 'deems it proper or advisable.' Dissemination of ideas depends upon the approval of

the distributor by the official. This is administrative censorship in an extreme form. It abridges the freedom of religion, of the press and of speech guaranteed by the Fourteenth Amendment."

Similar holdings have been made in other cases involving Jehovah's witnesses:

Emch v. *Guymon*, 75 Okla. Cr. 1, 127 P. 2d 855 (1942);
Blue Island v. *Kozul*, 379 Ill. 511, 41 N. E. 2d 515 (1942);
South Holland v. *Stein*, 373 Ill. 472, 26 N. E. 2d 868 (1940);
Tucker v. *Randall*, 18 N. J. Misc. 675, 15 A. 2d 324 (1940);
State ex Rel. Wilson v. *Russell*, 146 Fla. 539, 1 S. 2d 560 (1941);
State ex Rel. Hough v. *Woodruff*, 147 Fla. 299, 2 S. 2d 577 (1941);
Borchert v. *Ranger*, 42 F. Supp. 577 (1941);
Commonwealth v. *Homer*, 153 Pa. S. C. 433, 34 A. 2d 169 (1943);
Commonwealth v. *Akmakjian*, — Mass. —, 55 N. E. 2d 6 (1944).

Therefore it is well settled that laws requiring the obtaining of a permit or license are unconstitutional, void, and cannot support a conviction when applied to the activity of Jehovah's witnesses in preaching the gospel, as attempted in this case.

C

The statute and regulation are unconstitutional insofar as they have been construed and applied by the court below to be a means of enforcing with criminal sanctions the absolute prohibition imposed by the Gulf Shipbuilding Corporation on the activity of Jehovah's witnesses in preaching the

gospel by means of distributing printed Bible sermons to persons passing along the street and sidewalk in question.

The Gulf Shipbuilding Corporation did not seek merely to regulate the activity of appellant on the sidewalk and street.

It never sought to impose or request observance of any rule regarding the time or manner in which the activity could be carried on. It arbitrarily ruled that the property was private and that the activity of Jehovah's witnesses would not be tolerated thereon. Obviously this is a downright prohibition not based on any interest the corporation might have in reasonably regulating its streets. The trespass statute here invoked becomes unconstitutional insofar as it provides means of enforcement of this rule.

Even in the United States Supreme Court's now reversed[3] opinion in *Jones* v. *Opelika*, 316 U. S. 584, 595-596 (1942), given to sustain its decision adverse to Jehovah's witnesses on the validity of peddlers' license-tax ordinances of certain municipalites, the majorty declared,

> "Ordinances absolutely prohibiting the exercise of this right to disseminate information are, *a fortiori*, invalid."

This was definitely settled in *Jamison* v. *Texas*, 318 U. S. 413 (1943).

An ordinance which prohibits distribution of literature within a certain section of a city, such as the congested business district, has been declared unconstitutional. *Ex parte Walrod*, 73 Okla. Cr. 299, 120 P. 2d 783 (1941); *Ex parte Winnett*, 73 Okla. Cr. 332, 121 P. 2d 312 (1942). Laws absolutely prohibiting distribution of literature when applied to the activity of Jehovah's witnesses are unconstitutional and void and of no force and effect. *Common-*

[3] 319 U. S. 103.

wealth v. *Anderson*, 308 Mass. 370, 32 N. E. 2d 684 (1941). See, also, *Thornhill* v. *Alabama*, 310 U. S. 88 (1939); *Carlson* v. *California*, 310 U. S. 106 (1939); *Near* v. *Minnesota*, 283 U. S. 697 (1931); *Zimmermann* v. *London*, 38 F. Supp. 582 (1941).

Two

As they have been construed and applied by the court below to abridge and deny appellant's constitutionally guaranteed rights of freedom of speech, press, assembly and worship, the statute, as well as the regulation, is presumptively unconstitutional, and which presumption the state has failed to overcome by a showing that both of those enactments are reasonable and necessary means to prevent a clear, present and substantial danger to the public peace and order, or right of private property.

The trespass statute under which appellant has been convicted is enacted under the "police authority" of the state. Of course the State is given a wide discretion in the use of such authority and the courts uniformly apply what is known as a "presumption of validity" to the legislative declarations enacted under its police power. However, when so-called "police legislation" either on its face or as construed and applied infringes on the domain of these freedoms it is at once thrown back if those who seek to enforce its restraint fail to surmount the presumption of invulnerability which surrounds the "four freedoms" by establishing (1) a clear, present and substantial danger to the public welfare or right of private property, and (2) that it is a reasonable means to the end sought to be accomplished and is not arbitrary, unreasonable or oppressive. The showing of some *abuse* of the constitutionally secured freedoms is a condition precedent to the exercise of the police power where such exercise of power has a tendency to limit, infringe, restrict or prohibit any of the

constitutional freedoms. The police power dare not intrude unless there is a clear showing of the *abuse*. This rule is well stated by Chief Justice Hughes in *De Jonge* v. *Oregon*, 299 U. S. 353 (1937):

> "The people through their legislatures may protect themselves against that abuse. But the legislative intervention can find constitutional justification only by dealing with the abuse. The rights themselves must not be curtailed. * * * Therein lies the security of the republic, the very foundation of constitutional government."

This same rule was effectively applied by the United States Court of Appeals for the District of Columbia in *Busey* v. *District of Columbia*, 78 App. D. C. 189, 138 F. 2d 592 (1943), executing mandate at 319 U. S. 579. In that case an occupational license tax was sought to be applied to the activity of Jehovah's witnesses. The controversy reached the United States Supreme Court after the precedent case of *Murdock* v. *Pennsylvania*, 319 U. S. 105 (1943), had been decided. The Supreme Court remanded the case to the Court of Appeals for further consideration; and upon such reconsideration Mr. Justice Edgerton, speaking for the court, held:

> "Freedoms of speech, press, and religion are entitled to a preferred constitutional position because they are 'of the very essence of a scheme of ordered liberty.' (Palko v. Connecticut, 302 U. S. 319, 325.) They are essential not only to the persons or groups directly concerned but to the entire community. Our whole political and social system depends upon them. * * *
>
> "*We think we may now hold that when legislation appears on its face to affect the use of speech, press, or religion, and when its validity depends upon the existence of facts which are not proved, their existence*

> *should not be presumed;* at least when their existence is hardly more probable than improbable, and particularly when proof concerning them is more readily available to the government than to the citizen. *The burden of proof in such a case should be upon those who deny that these freedoms are invaded.* * * * No presumption which lacks a probable basis in fact should be permitted to conceal an interference with essential freedoms." (Italics added.)

The decision of the United States Supreme Court in *United States* v. *Carolene Products Co.*, 304 U. S. 144, 152 (1938); *West Virginia State Board of Education* v. *Barnette*, 310 U. S. 624, 638-640; *Thornhill* v. *Alabama*, 310 U. S. 88 (1940); and *Schneider* v. *New Jersey*, 308 U. S. 147, all apply this same rule.

In the enclosure of civil rights and fundamental personal liberties secured by the express guarantees of above cited portions of the Federal Constitution, there is not established a broad channel in which the government and the courts may operate according to their discretion. The people, by these specific constitutional provisions, have definitely narrowed the channel of regulation and governmental activity and walled them in by high banks of rock, as it were, on both sides of the governmental waters. This is to prevent a change of course of the stream and to keep the way straight and narrow. If the government gets out of its fixed course in these precious fields, there immediately arises a presumption of invalidity and unconstitutionality to throw back the stream of regulatory practice into the fixed channel properly made by the people through their Constitution.

The construction and application given to the statute by the court below are as mere flood waters which are out of the course established by the people. It is the purpose of

this discussion to show how they should be rightly returned to their proper place and recede from the field of fundamental personal liberties belonging to appellant and those similarly situated.

In his book "The Struggle for Judicial Supremacy" (New York, Knopf, 1941), Robert H. Jackson, now Associate Justice of the Supreme Court of the United States, says (p. 285):

> "The presumption of validity which attaches in general to legislative acts is frankly reversed in the case of interference with free speech, free press and free assembly, and for a perfectly cogent reason. Ordinarily, legislation whose basis in economic wisdom is uncertain can be redressed by the processes of the ballot box or the pressures of opinion. But when the channels of opinion and of peaceful persuasion are corrupted or clogged, these political correctives can no longer be relied on, and the democratic system is threatened at its most vital point. In that event the court, by intervening, restores the processes of democratic government; it does not disrupt them."

Because the State has failed to discharge its burden of proving a clear and present danger of substantial evils to the community, the conviction cannot be sustained. In holding that a clear and present danger test must be applied to police-power abridgements of the liberties protected by the First Amendment, the United States Supreme Court in the "labor organizer" case of *Thomas* v. *Collins*, 65 S. Ct. 315, 322 (1945), said:

> "The case confronts us again with the duty our system places on this Court to say where the individual's freedom ends and the State's power begins. Choice on that border, now as always delicate, is perhaps more so where the usual presumption supporting legislation is balanced by the preferred place given in our scheme to the great, the indispensable democratic free-

doms secured by the First Amendment. [Cases cited.] That priority gives these liberties a sanctity and a sanction not permitting dubious intrusions. And it is the character of the right, not of the limitation, which determines what standard governs the choice. Compare United States v. Carolene Products Co., 304 U. S. 144, 152, 153.

"For these reasons any attempt to restrict those liberties must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger. The rational connection between the remedy provided and the evil to be curbed, which in other contexts might support legislation against attack on due process grounds, will not suffice. These rights rest on firmer foundation."

Judged by these standards, it is clear that appellant's conduct in the Village, under the circumstances shown, did not and could not constitute any clear and present danger which would justify an application of the police power that would work to curtail the precious personal liberties secured by the Constitution.

THREE

The statute and the regulation are unconstitutional on their face and as construed and applied by the courts below in that they are not narrowly drawn laws in either case defining and punishing specific conduct, but both are vague, indefinite, uncertain, too general, and both fail to furnish a sufficiently ascertainable standard of guilt, permit speculation and amount to a dragnet, contrary to the due process and equal protection clauses of the Fourteenth Amendment to the Federal Constitution.

It will be noted from a reading of the statute in question that the imposition of the penal sanction is provided for in every case where a person enters on the premises of

another and, after being warned to leave, "fails or refuses [so to do], without legal cause or good excuse". Ultimately, therefore, the guilt or innocence of any particular individual who refuses, after warning, to leave the premises of another, is made to depend entirely on the view of the court or jury as to whether he had "legal cause or good excuse". Two questions at once suggest themselves: (1) What is the meaning of the phrase, and (2) Does the phrase as used in the statute prescribe with sufficient definiteness the limits of permissible conduct and warn against transgression?

The United States Supreme Court answered both of those questions in *Thornhill* v. *Alabama*, 310 U.S. 88, 100 (1939). As to the first question the court observed,

> "The phrase 'without just cause or legal excuse' does not in any effective manner restrict the breadth of the regulation; the words themselves have no ascertainable meaning either inherent or historical. Compare *Lanzetta* v. *New Jersey*, 306 U. S. 451, 453-455. So far as the phrase may have been given meaning by the State courts it apparently grants authority to the court and the jury to consider defensive matter brought forward by the accused, depending for its sufficiency not upon rules of general application but upon the peculiar facts of each case."

From this it is seen, therefore, that the court or the jury is not given any definite or reasonably ascertainable rules by which to judge the conduct of persons charged with a violation of this statute. They are forced to speculate on the evidence, and judge the defendant according to his own concept of what constitutes "legal cause or good excuse."

As to the second question, the United States Supreme Court was equally definite in its answer. It said (pp. 97-98):

> "It is not merely the sporadic abuse of power by the censor but the pervasive threat inherent in its very

existence that constitutes the danger to freedom of discussion * * * A like threat is inherent in a penal statute, * * * which does not aim specifically at evils within the allowable area of statute control but, on the contrary, sweeps into its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech or of the press. The existence of such a statute, which readily lends itself to harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure is a continuous and pervasive restraint on all freedom of discussion that might reasonably be regarded as within its purview. It is not any less effective or, if the restraint is not permissible, less pernicious than the restraint on freedom of discussion imposed by the threat of censorship * * * Where regulations of the liberty of free discussion are concerned, there are special reasons for observing the rule that it is the statute, and not the accusation or the evidence under it, which prescribes the limits of permissible conduct and warns against transgression."

It would certainly be impossible for a citizen to tell in advance, just what the court or jury might consider a "legal cause or good excuse". However true it may be that the evidence would ultimately show that the defendant did not have legal cause or good excuse, this does not cure the defect in the statute itself, which does not sufficiently forewarn the people as to just what conduct is unlawful. Had the statute in this case been sufficiently clear in its definition of the conduct made unlawful, this case would never have arisen in its present state of complication.

The due process clause requires that criminal statutes shall be so framed that those to whom they are addressed may know what standard of conduct is intended to be required, so that men may guide their steps accordingly. *United States* v. *Capital Traction Co.*, 34 A. D. C. 592; *Tozer*

v. *United States*, 52 F. 917 (1892); *United States* v. *Cohen Grocery Co.*, 255 U. S. 81.

The question here presented was specifically disposed of in *Herndon* v. *Lowry*, 301 U. S. 242 (1936), where Mr. Justice Roberts said:

> "* * * No reasonably ascertainable standard of guilt is prescribed. So vague and indeterminate are the boundaries thus set to the freedom of speech and assembly that the law necessarily violates the guarantees of liberty embodied in the Fourteenth Amendment."

In *Stromberg* v. *California*, 283 U. S. 359 (1931), the California statute was declared unconstitutional because of its vagueness and indefiniteness. See also *De Jonge* v. *Oregon*, 299 U. S. 353 (1937).

In *Lanzetta* v. *State*, 306 U. S. 451 (1939), in declaring the New Jersey "gang law" invalid, Mr. Justice Frankfurter said: "If on its face the challenged provision is repugnant to the due process clause, specification of details of the offense intended to be charged would not serve to validate it. * * * It is the statute, not the accusation under it, that prescribes the rule to govern conduct and warns against transgression. * * * No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids. * * * The applicable rule is stated in *Connally* v. *General Const. Co.*, 269 U. S. 385, 391."

The New Jersey Supreme Court, in *New Jersey* v. *Klapprott*, 127 N. J. L. 359, 22 A. 2d 877 (1941), declared the "Anti-Nazi Law" of New Jersey invalid as construed to the hate speeches of the Nazi Bund members inciting violence against the Jews. In setting aside the convictions that court found the statute vague, indefinite and a dragnet.

The court said: "Suppose such statement was made in the privacy of one's home to two persons there present, or, as it is suggested in the excellent brief of the *amicus curiae*, suppose a father is instructing his children about the religion of a neighbor and such exposition excites hostility in the children towards those neighbors. This exposition or statement of view would result in the commission of a misdemeanor under the scope of this most sweeping statute. It is not required that the statement be made in a public place. Teachers in our high schools and colleges could be found to be violators of the law out of their lectures on the philosophy of history, or their dissertations on religion, or on the various cults which came into being through the years."

In further support of the contention here urged reference is made to *Smith* v. *Cahoon*, 283 U. S. 553, 564 (1930); *New Jersey* v. *Klapprott*, 127 N. J. L. 359, 22 A. 2d 877 (1941); *Connally* v. *General Const. Co.*, 269 U. S. 391, 392 (1925); *Small* v. *American Sugar Ref'g Co.*, 267 U. S. 233 (1925); *Weeds, Inc.* v. *United States*, 255 U. S. 109 (1920).

The very fact that the appellant and her companions, as faithful followers of Jesus Christ who refuse to break their integrity to Almighty God and who are guilty of no wrong, have been convicted is proof conclusive that the statute is a dragnet. The statute depends for its enforcement, meaning, and understanding upon the political views, whims and opinions of individuals, and not upon defined precise rules of law, equally and equitably applicable at all times throughout the state.

It is respectfully submitted that the statute prescribes no ascertainable standard of guilt and is a dragnet allowing deprivation of liberty in violation of the Fourteenth Amendment to the United States Constitution and the similar provision in the Alabama Constitution.

Conclusion

WHEREFORE the Supreme Court of the United States should note jurisdiction of this cause for final hearing in accordance with the rules of the court, because the court below disposed of important and substantial federal questions in a way that is in conflict with applicable decisions of the nation's highest court, and has so radically and far departed from the Constitution of the United States and the accepted sound course of judicial procedure as to call for exercise by the Supreme Court of the United States of its power of supervision and review to halt the same.

Respectfully submitted,

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APPENDIX

THE STATE OF ALABAMA, JUDICIAL DEPARTMENT, THE ALABAMA COURT OF APPEALS, OCTOBER TERM, 1944-45

1 Div. 479

GRACE MARSH

v.

STATE

Appealed from Mobile Circuit Court

RICE, *Judge:*

There is a Statute of Alabama reading in pertinent part as follows, to-wit: "Any person who, without legal cause or good excuse, enters * * * on the premises of another, after having been warned, within six months preceding, not to do so; or any person, who, having entered * * * on the premises of another without having been warned within six months not to do so, and fails or refuses, without legal cause or good excuse, to leave immediately on being ordered or requested to do by the person in possession, his agent or representative, shall, on conviction, be fined not more than one hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than three months." Code 1940, Title 14, Section 426.

Appellant was convicted of a violation of the terms of the above Statute; the specific charge against her being that she "without legal cause or good excuse and after having been warned within the past six months not to do so, entered upon the premises of the Gulf Shipbuilding Corporation, a Corporation, contrary to law and against the peace and dignity of the State of Alabama."

She was tried before the Court, sitting without a jury, and assessed a fine of fifty dollars.

The material circumstances, as we will endeavor to state them from the record, are that the land upon which appellant entered, and was arrested, originally belonged to the Tennessee Land Company, a Corporation. While in the possession of this Company it erected thereon what is described in the testimony as a "business block."

This "business block" consisted of one building, divided by suitable partitions into several stores, or business places. It fronted toward a public highway, but the front was some 40 or 59 or 30 feet distant from the said highway.

In front of the "business block," running all the way across—some 250 feet—and parallel to the public highway, but upon the private property of the Tennessee Land Company, it had constructed a paved road way. Between this paved roadway and the front of the "business block," there was a paved sidewalk constructed at the same time as, and as a part of, the said "business block." The paved roadway was separated from the public highway by an unpaved portion of the land of the Tennessee Land Company; and the paved sidewalk was separated from the paved roadway by a likewise unpaved strip of land.

All this was done more than twenty years before the beginning of this prosecution; but there is no dispute but that the Tennessee Land Company, and its successors in interest, throughout that time exercised full control over the paved sidewalk mentioned,—the paved roadway being not now involved—as part of its private property. The stores, or business places, in the so-called "business block," were rented separately to various and sundry parties during these years; and, of course, the paved sidewalk served, without objection on the part of the Tennessee Land Company and its successors in title, the customers of these establishments.

But the testimony is without dispute that throughout the time in question, the Tennessee Land Company and its successors paid the taxes upon and maintained control of the sidewalk in question, along with all its other private property—and that people going upon it for any other purpose than as a means of ingress and egress to and from the stores or business places mentioned were required to procure "permits" from it or them.

It should perhaps be here noted that the property in question, including the sidewalk, was transferred by proper conveyances to the Gulf Shipbuilding Corporation prior to the time of the incidents leading to this appeal.

There is really no great dispute as to the facts in the case. Appellant, admittedly, or without conflict in the testimony, was duly and properly warned, "within six months preceding" her arrest not to go upon the premises of the Gulf Shipbuilding Corporation.

She did so go upon them—that is, the sidewalk, above, which we will later a little more clearly demonstrate was the "premises" of said corporation, in the sense of the Statute quoted at the beginning of this opinion—and was there arrested on December 24th 1943, on the charge for which she was convicted—giving rise to this appeal.

Appellant is represented here by numerous counsel, who have, jointly, filed an exceedingly voluminous brief in her behalf. They would have us consider a wide variety of questions in reaching a decision in the case.

Among many other things, counsel say: "Petitioner (appellant) Grace Marsh is an ordained minister of the gospel, and as such is one of Jehovah's witnesses. The Watchtower Bible and Tract Society, under direction of which she carried forward her ministerial activities, issued to her a certificate of ordination and identification, which was introduced in evidence. * * * Therein it is explained that Jehovah's witnesses are true followers of Christ Jesus and are dedicated to the promulgation of His teachings among the people of good-will toward Almighty God. This is done in the apostolic manner as shown in the following scriptures cited from the Bible:

'And how I * * * have taught you publickly, and from house to house.' *Acts* 20:20.

'Go ye into all the world, and preach the gospel to every creature.' *Mark* 16:15.

'And he [Jesus] went round about the villages, teaching.' *Mark* 6:6.

'And it came to pass afterward, that he went throughout every city and village, preaching and shewing the glad tid-

ings of the Kingdom of God: and the twelve were with him.' *Luke* 8:1.

"Petitioner (appellant) said that she devoted her entire life to this work. In addition to orally teaching the people concerning the Kingdom of God, she used various printed publications, such as books, booklets and magazines. Such she distributed to 'any person of good-will who desires to read them.' To the end that this may be accomplished in an orderly manner, the City of Mobile and surrounding communities had been divided up by Jehovah's witnesses into territory sections, and each minister given a section to serve.

"Chickasaw, Alabama, a suburb of Mobile, lies in the territory assigned to petitioner (appellant) * * * The place was owned and developed by the Tennessee Land Company."

We have already stated, hereinabove, of what the relevant development—the "business block"—consisted.

We continue with our quotation from appellant's brief, to wit: "In 1941 the Tennessee Land Company sold its property, including the business block in question, to the Chickasaw Development Company, which in turn was shortly absorbed into the Gulf Shipbuilding Corporation, the present owner.

"Representatives of both the present and former owners of the business block declared [and nobody disputed them, we interpolate] that there had never been an express dedication of the streets and sidewalks to the public use and that the owners had always paid taxes on the property thus being used."

However, appellant's counsel say: "The deed conveying the property in question to its present owner shows that there was a recognized dedication of the 'streets, alleys and public roads.' (Because) in the warranty section of the deed, the Grantor (Chickasaw Development Co. Inc.) put the following limitation: '* * * provided however that the warranties herein contained do not apply to areas or property located in any of the streets, alleys or public roads * * * and as to said streets, alleys, public roads * * * this instrument shall constitute a *quit-claim deed* only'." (Italics supplied by us.)

And then counsel say: "Furthermore, the evidence is undisputed that the sidewalks have never been restricted for the general, orderly use of the public, *peddling excepted.*" (Italics added by us.)

Appellant's counsel then quote the Tennessee Land Company's Manager who said he "never stopped anybody from using it (the sidewalk, where appellant was arrested, we interpolate) so long as they used it in an orderly and proper manner and were not there for any gainful purpose."

Counsel then say: "For approximately six months prior to December 24, 1943, Grace Marsh (this appellant) * * * had been engaged in the distribution of printed Bible literature to the people living in the Chickasaw development. It was her custom particularly to engage in the distribution of the *Watchtower* and *Consolation* magazines each Saturday afternoon on the sidewalk in front of the business block. This she would do by standing on the outer edge of the sidewalk near the curb displaying the magazines to the people passing up and down, at the same calling out in moderate tones, 'Watchtower, announcing Jehovah's Kingdom.' She insisted that the magazines were not for sale and that she was not selling them, but she explained that she offered this literature freely to all persons with whom she came in contact, giving such publications to those who desired to read and study same. The persons receiving this literature were given opportunity to contribute a small sum to assist in printing like literature and to further the charitable work in which she was engaged. But if the person was too poor or otherwise unable to contribute anything, and desired to have literature, she said she let such have the magazines without receiving any contribution."

It is then set out in appellant's brief filed here that she was detained on Dec. 11th 1943 by the officer policing Gulf Shipbuilding Corporation's property, for a short time, but released. After which she went to see Mr. Peebles, Gulf Shipbuilding Corporation's Vice-President in charge of the property in question, and told him that she was "engaged in a charitable Christian work as (an) ordained minister * * * and advised him that since her continu-

ance in this God-given activity to them (her) meant everlasting 'life or death' at the hand of Almighty God, they (she) would have to insist on their (her) constitutional right to distribute this printed message of God's Kingdom to the people in the manner aforesaid." Mr. Peebles told them (her) that regardless of their (her) understanding, they (*she*) would first have to obtain a permit to carry on their (her) work and that he was not willing to issue such a permit. Further he specifically warned them (her) not to come on the streets again.

Thereafter, on December 24th 1943, appellant appeared with her magazines on the sidewalk in front of the business block. They (she) was immediately accosted by Mr. Chatham, the Company (Gulf Shipbuilding Corporation) police officer, who again informed her that she could not carry on her activity without a permit. Appellant said she then "reminded him that we were ordained ministers and that was the right granted to us by the Constitution; we were commanded by Almighty God to do this and we couldn't ask man for permits to do this work; we were not peddlers and we were not soliciting for anything, we were simply there carry on our Christian educational work in an orderly manner."

The officer then placed them (her) under arrest.

We think what we have set forth, and quoted, hereinabove will make clear the basis for the conclusion we have reached.

The fact that all of the stores or business places, which were but "apartments," or "divisions" of the "business block"—consisting of one building—mentioned, were rented—but to different people or parties—at the time of the occurrence of the event giving rise to this prosecution, militated in no way against the possession and control—*otherwise* resting in it—of this "sidewalk" where appellant was arrested, being and remaining in Gulf Shipbuilding Corporation, whose authorized representative gave appellant due notice not to trespass thereon. *McMillan* v. *Solomon*, 42 Ala. 356.

And we find nothing in the testimony indicating that the owner of the land on which the sidewalk was constructed

had ever in any way relinquished its possession and control of the said sidewalk. The fact that the sidewalk was used freely, and without objection, by the public, solely as a means of ingress and egress to and from the stores in said "business block" was in no way a relinquishment by the owner of its title to same. See *Tutwiler Coal, Coke & Iron Co.* v. *Tuvin*, 158 Ala. 657, 48 S. 79.

In fact, the testimony is positively to the fact that throughout the years during which the sidewalk had been in existence the owner of the property had required "permits" to be procured from it by all those using it for any other purpose than as a means of ingress and egress to and from the stores in the said "business block".

Of course, for there to have been a "dedication" of the sidewalk in question to the use of the public, it must have been used by said public "*without let or hindrance*" for a period of twenty years prior to the time of the beginning of the prosecution. (Italics ours.) *Central of Georgia Ry.* v. *Faulkner*, 217 Ala. 82, 114 S. 686.

It has been said that "a public highway is one *under the control and kept by the public*, and must be either established in a regular proceeding for that purpose, or *generally* used by the public for 20 years, or dedicated by the owner of the soil and accepted by the proper authorities." (Italics supplied by us.) *Bellview Cemetery Co.* v. *McEvers*, 174 Ala. 457, 57 S. 375; and see *The Attorney General* v. *Lakeview Land Co.*, 143 Ala. 291, 39 S. 303.

Clearly, the fact that the *Chickasaw Development Co., Inc.* simply "quit-claimed" the "streets, alleys and public roads" on the property, operated to give the title to the "sidewalk" to the Gulf Shipbuilding Corporation in *exactly* the same way that it was held by the grantor.

No, the Gulf Shipbuilding Corporation had a perfect right to give to appellant, through its duly authorized representative as appears, the notice not to "trespass" upon the sidewalk where she was arrested.

And we come now to her real "defense"—that, as she says, to use her own words: "I reminded him (the officer, and agent of the Gulf Shipbuilding Corporation) we were ordained ministers and that was the right granted to us

by the Constitution; we were commanded by Almighty God to do this and we couldn't ask man for permits to do this work; we were not peddlers and we were not soliciting for anything, we were simply there carrying on our Christian educational work in an orderly manner."

Or, as her counsel state it: "The Statute (under which she is prosecuted), insofar as it has been construed and applied by the court below to allow the owner of the sidewalk and street arbitrarily to prohibit petitioners (appellant) from distributing thereon in an orderly manner Bible literature explaining God's Kingdom constitutes an unreasonable abridgement of petitioner's (appellant's) rights of freedom of speech, press, assembly and worship, contrary to the first and fourteenth amendments to the United States Constitution, and Article One, Sections 1, 3, 4, 6 and 25 of the Alabama Constitution."

In brief filed here on behalf of the State it is said: "Apparently appellant relies on the constitutional provisions protecting religious freedom as her chief and real defense. This defense seems to be presented on two theories. First, that our Statute is unconstitutional when one is charged with a trespass after warning if the defendant appears to be trespassing while engaged in propagating his religious views. Second, that a party engaged in such religious activities is within his constitutional rights whether he is acting in a public place or on private property. This is more chimerical than any of these numerous Jehovah Witnesses cases we have found." See *Sarah Prince* v. *Commonwealth of Massachusetts*, 88 L. Ed. 403.

We are not sure that we understand the language we have just quoted. If the able and distinguished Assistant Attorney General writing the brief meant by "this" in the last sentence of the quotation, a *holding* by any court that either of the "theories" he refers to constituted a *defense* to a charge such as is here involved, we agree with him.

But if he meant that either of the two "theories" were "more chimerical than any of these Jehovah Witnesses Cases we have found," we believe we can help him.

We seem to have found a case involving facts not distinguishable—in so far as the applicable law is involved—

from those shown by the undisputed testimony in the case. And, mutatis mutandis, we approve of the holding involved in the quotation we shall take from the annotation, appearing at page 655, following the report of the case of *Commonwealth of Massachusetts* v. *Noah S. Richardson (Com. Mass. v. Fred E. Stanton)* 146 A. L. R. 648, viz.: "In *State* v. *Martin* (1941) 199 La. 39, 5 S. 2d 377, the court sustained the constitutionality of a Statute penalizing any one who should enter upon private property after having been warned not to do so, as against the contention that it violated the First and Fourteenth Amendments to the Constitution of the United States, particularly the latter, forbidding any State to make or enforce any law which shall abridge the privileges or immunities of citizens of the United States or deprive any person of life, liberty, or property without due process of law or deny any person within its jurisdiction the equal protection of the laws, and the third and fourth sections of Article 1 of the Constitution of Louisiana, prohibiting any law 'to curtail or restrain the liberty of speech or of the press,' and providing: 'Every person has the natural right to worship God according to the dictates of his own conscience. No law shall be passed respecting an establishment of religion, nor prohibiting the free exercise thereof; nor shall any preference ever be given to, nor any discrimination made against, any church, sect, or creed of religion, or any form of religious faith or worship,' as applied to the defendant and her co-defendants, who were ordained ministers of the gospel of the organization known as Jehovah's witnesses and whose duties were to visit people in their homes and present to them recorded Bible lectures, Bibles, and Christian pamphlets and literature, and who in the performance of those duties entered upon private property 'sufficiently posted by the owner warning trespassers off,' and after an additional verbal warning by the owner, continued to propound their ideas verbally and through the use of phonograph records. The court said: 'The argument of the relatrix is that, because she and her companions were engaged in such praiseworthy work, preaching Christianity and distributing Christian pamphlets and other Christian literature,' she and her coworkers, while so engaged, were pro-

tected by the constitutional inhibition of laws respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press. These guaranties of freedom of religious worship, and the freedom of speech and of the press, *do not sanction trespass in the name of freedom. We must remember that personal liberty ends where the rights of others begin. The constitutional inhibition against the making of a law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press, does not conflict with the law which forbids a person to trespass upon the property of another.*" (Italics supplied by us.) And we refer to the opinion in the case of *Commonwealth of Massachusetts* v. *Noah S. Richardson (Com. of Mass.* v. *Fred E. Stanton).*

The rather lengthy quotation we have set forth—especially the portion we have italicized—expresses our views better, we believe, than we could state them otherwise. It is applicable—with the substitution of our own constitutional provisions—in substance similar—for those of the State of Louisiana. And we rest our decision on what is there said.

Since appellant feels aggrieved because she is made amenable to our Statute against "trespass after warning," when, as she says, she was simply obeying the command of the Master—Jehovah God, if it pleases her—to "go ye into all the world, and preach the gospel to every creature" (Mark 16:15), we would remind her that this same Master *also cautioned* her, that "* * * whosoever shall not receive you, nor hear your words, when ye depart out of that house or city, shake off the dust of your feet" (Matthew 10:14); which we take to be an injunction not to go back on private property, after having been duly warned to stay away.

The judgment is affirmed.

Affirmed.